MONTANA LEGISLATIVE HISTORY

Chapter 242 1985

Bill H 600 S _____ Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 08	✓ C	Hearing Date(s)	Mar 06	✓ C
	Feb 11	✓ C		_____	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Feb 11	✓ C		Mar 06	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2/19	3RD READING PASS	98	0
	TRANSMITTED TO SENATE		
2/21	REFERRED TO BUSINESS & INDUSTRY		
3/26	HEARING		
3/27	ADVERSE COMMITTEE REPORT	41	7
3/27	BILL KILLED		

HB 599 INTRODUCED BY ASAY
REMOVE HYDROELECTRIC DAM EMPLOYEE 8-HOURS DAY'S WORK REQUIREMENT

1/31	INTRODUCED		
1/31	REFERRED TO BUSINESS & LABOR		
2/14	HEARING		
2/15	COMMITTEE REPORT-BILL DO PASS		
2/16	2ND READING PASS	58	0
2/19	3RD READING PASS	98	0
	TRANSMITTED TO SENATE		
2/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/19	HEARING		
3/20	COMMITTEE REPORT-BILL CONCURRED		
3/22	2ND READING CONCURRED	48	0
3/25	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/28	SIGNED BY SPEAKER		
3/28	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 281 EFFECTIVE DATE: 10/01/85		

HB 600 INTRODUCED BY MERCER, SWIFT, ET AL.
INCLUDE OUT-OF-STATE CONVICTIONS FOR DUI & BROADEN CHARGING ON DUI

1/31	INTRODUCED		
1/31	REFERRED TO JUDICIARY		
2/08	HEARING		
2/11	COMMITTEE REPORT-BILL DO PASS		
2/13	2ND READING PASS	87	8
2/14	3RD READING PASS	89	8
	TRANSMITTED TO SENATE		
2/15	REFERRED TO JUDICIARY		
3/06	HEARING		
3/06	COMM REPORT-BILL CONCURRED AS AMENDED		
3/08	2ND READING CONCURRED	48	1
3/11	3RD READING CONCURRED	48	2
	RETURNED TO HOUSE WITH AMENDMENTS		
3/15	2ND READING AMENDMENTS CONCURRED	94	1
3/18	3RD READING AMENDMENTS CONCURRED	94	4
3/23	SIGNED BY SPEAKER		
3/23	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		

Jo Anne Peterson, legislative intern for the Montana Education Association, testified in support of this bill. She said that according to a 1984 article in Junior Scholastic, strangers take away an estimated 50,000 children a year. She gave examples of the lenient sentences some of these kidnappers receive when they are caught and convicted. A copy of her testimony was marked as Exhibit D and is attached hereto.

There were no further proponents or opponents, and Rep. Kadas closed.

Rep. Keyser wanted to know if this bill affects divorced fathers. Rep. Kadas said that it would.

In response to a question of Rep. Hannah's on what the intent of the bill is, Rep. Kadas said it is primarily geared to deal with other circumstances instead of custodial interference.

Hearing closed on HB 575.

CONSIDERATION OF HOUSE BILL NO. 600: Rep. Mercer, District #50, chief sponsor of the bill, said this is an act to include out-of-state convictions for driving under the influence of alcohol or drugs and driving with excessive blood alcohol concentration. He said the bill is aimed at multiple offenders.

Larry Majerus, administrator from the Motor Vehicle Division of the Department of Justice, appeared and testified before the committee.

There were no further proponents or opponents, and Rep. Mercer closed.

Rep. Montayne asked if an out-of-state driver's license is suspended in Montana, will it be suspended in the state he resides in? Mr. Majerus said his driving privileges would be suspended in Montana, and the division would also report his suspension to his home state.

Hearing closed on HB 600 and the committee went into executive session at 10:10 a.m.

ACTION ON HOUSE BILL NO. 186: Rep. Brown moved that HB 186 DO PASS. The motion was seconded by Rep. Darko and discussed. Rep. Brown feels this bill is in good shape and provides flexibility to counties.

offered by Mr. Kelly. He further stated that the company doesn't have any problem with HB 265.

Mike Micone, representing the Western Environmental Trade Association, stated his support for the bill with the amendments offered by Mr. Kelly.

There being no proponents to the bill, Rep. Grady closed. Rep. Grady feels this bill should pass in case HB 265 is jeopardized in any way.

In response to a question by Rep. Eudaily, Mr. Kelly stated that the intent of the bill is to say that while we are trying to prevent good reasonable use of the facility from the impoundment on, we are not trying to regulate the water that is behind the dam. Mr. Kelly stated he would have no objection clarifying this language.

Hearing closed on HB 520.

EXECUTIVE SESSION:

Representative Hannah called an executive session at 10:30 a.m.

ACTION ON HOUSE BILL NO. 575: Rep. Darko moved that HB 575 DO PASS. The motion was seconded by Rep. Hammond.

Rep. Addy moved the bill on line 25 following "victim" by striking the rest of the sentence in its entirety. The motion was seconded by Rep. Rapp-Svrcek and the question called. The motion to amend carried unanimously.

Rep. Darko moved that HB 575 DO PASS AS AMENDED. The motion was seconded by Rep. Hammond and discussed. The question was called, and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 600: Rep. Keyser moved that HB 600 DO PASS. The motion was seconded by Rep. O'Hara. The motion carried with Rep. Brown and Krueger dissenting.

ACTION ON HOUSE BILL NO. 313: Rep. Keyser moved that HB 313 BE TABLED. The motion was seconded by Rep. Gould and carried unanimously.

ACTION ON HOUSE BILL NO. 300: Rep. Eudaily moved that HB 300 DO PASS. The motion was seconded by Rep. Hammond.

STANDING COMMITTEE REPORT

February 11 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 603

FIRST reading copy (WHITE color)

INCLUDE OUT-OF-STATE CONVICTIONS FOR DUI & BROADEN CHARGING ON DUI

Respectfully report as follows: That HOUSE Bill No. 603

DO PASS

REP. TOM HANNAH Chairman.

STATE PUB. CO.

difficult to get the paperwork in and back. Some defendants are deserving of this. Senator Pinsoneault asked if there were something that could be done to step up that process. He asked if the judge had any authority to issue one on the spot. Ms. Claassen replied they must wait. Based on statute, you must first determine if a person is qualified to have a license. Other than changing the law that says the division is going to be the one issuing a license, she didn't see how the judge could do that. The law is also based on whether he attends a court school. Chairman Mazurek pointed out the committee had a bill coming in from Representative Gould that deals with the ability of the judge to issue a temporary permit for someone who loses his license. Senator Pinsoneault commented some fellows drive for their livelihood, and he feels this would be useful. She believes it should be cleared up when you have someone who comes into court and is convicted of a first DUI and is suspended. He is not apprehended at that time. Technically, they are not suspended when they walk out of the courtroom, only when the division receives the report.

Hearing on HB 246 was closed.

CONSIDERATION OF HB 600: Representative John Mercer, sponsor of the bill, testified it is very simple to allow us to consider out-of-state convictions at the time we determine whether a person has committed more than one offense. The main purpose for the bill is to get the people who are second and third time offenders, because those are the ones we are trying to get. Drunk driving statutes should be treated the same way, so the judge should be able to look at this information.

PROPONENTS: Duane Tooley, representing the Motor Vehicle Division, testified this would be another tool in the fight against drunk drivers. The way the current law is set up, it is a problem to see a man with multiple DUIs come into court and be charged with first offense. The intent is good to include all of his DUIs within the past five years. Barb Claassen, Assistant Attorney General representing the Motor Vehicle Division, testified there was nothing further she wanted to add except they are a proponent of this bill.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked how much information we got as a state pertaining to previous convictions of driving under the influence from other states. If all of the laws are uniform, there would be no problem. He asked if the laws could be so much different in other states that if the trial were held in Montana, it may not have resulted in a conviction. Ms. Claassen replied according to the drivers' license compact which this state and most other states have

passed, the situation does not come up where we have a report of a conviction in another state that is different from ours. Senator Crippen asked if a person who is convicted in Montana would have an opportunity to enter testimony that his conviction in another state was under different circumstances or circumstances that if the trial were held in Montana it would not have resulted in a DUI charge and conviction. Ms. Claassen replied you are talking not about out-of-state procedure, but about our procedure. All states have their own procedure for attacking a conviction, assuming these other states have procedures whereby a conviction could be attacked. We need to be concerned whether under our procedure a person can do this. We have a procedure for an administrative appeal or an appeal to the district court. Senator Crippen stated an example would be the blood alcohol standard. Ms. Claassen stated we have to remember that is a presumption. That is not the bottom line for driving under the influence. The bottom line is set by case law. Also, the presumption may vary from state to state, but the definition for driving under the influence does not. Senator Crippen asked if there were a situation where the defendant could have an opportunity to appeal and show they had a much lower alcohol content required in another state, and he would not have been convicted under the laws in Montana, if that might be a defense. Senator Mazurek questioned if that were an administrative procedure, because that is what the judge is looking at when making the sentencing determination. Ms. Claassen answered yes. What we will have to let the defendant show is they have attacked that conviction in another state. Subsection (b) also confuses things by bringing in the civil aspect. Senator Towe stated the concern he has is the definition of conviction. Section 45-1-102, MCA, only defines conviction. The only thing we can do is look back to Section 61-8-401, MCA. The only definition of conviction is a violation of Section 61-8-401, MCA. In another state, you are not found guilty of violating Section 61-8-401, MCA. Senator Towe asked where you got the authority to do that. He felt you needed to include "a statute similar to 61-8-401" or the defense counsel will say they didn't violate Section 61-8-401, MCA, in another state. Ms. Claassen replied that would be proper if you have a concern about that. Representative Mercer commented he would be open to any amendments along those lines. Senator Brown asked how we would know someone has a driving record of a conviction in another state. Mr. Tooley explained the officer arresting an individual for DUI will check his record. The Law Enforcement Teletype System (LETS) allows him access to other state's records. If they request a record and find he lives elsewhere, they will write and ask for his driving record. Senator Brown asked if we didn't know he lived in another state, would it be possible this may not come to light? Senator Towe stated you can't get this through NCIC. You are not supposed to get that through any state computer because driving offenses are not permitted to be entered in that computer. Mr. Tooley stated the

normal check is on the state of previous residence. Senator Towe asked if you were asked by the State of Arizona if there were a DUI conviction on a Montana citizen, would you relay the information to him? Mr. Tooley replied yes. Senator Towe asked if you can do that under the Criminal Justice Information Act. Mr. Tooley replied yes. Senator Towe asked if there were statutory authority in the drivers' license compact to exchange that information. Mr. Tooley replied yes.

CLOSING STATEMENT: None.

Hearing on HB 600 was closed.

ACTION ON HB 390: Mr. Petesch explained what this really does is add farm tractors and implements of husbandry and exempts bicycles and animal drawn vehicles. Senator Blaylock commented he could see putting in the tractor. However, he questioned big combines going down the road. Senator Pinsoneault stated he thinks this is a step in the right direction. Mr. Petesch stated chapters 3 and 4 are licensing and registration. Chapter 8, part 4, is specifically DUI. For purposes of only the DUI statutes, it will take in all motor vehicles, farm tractors, and implements of husbandry. Senator Pinsoneault moved HB 390 be recommended BE CONCURRED IN. The motion carried with Senator Daniels voting in opposition.

ACTION ON HB 210: Senator Towe moved HB 210 be recommended BE CONCURRED IN. Mr. Petesch explained the effect of this bill is to double the penalty for misdemeanor assault with a motor vehicle. Currently you can be convicted of misdemeanor assault for negligently causing bodily injury to another with a weapon, and there are cases that define motor vehicle as a weapon. The motion carried with Senator Daniels voting in opposition.

ACTION ON HB 246: Senator Towe moved HB 246 be recommended BE CONCURRED IN. Senator Brown stated he was still confused about the whole business between suspension and revocation. Senator Mazurek stated under the current laws, if a person is convicted of DUI; he appears before the judge; the judge writes out the result of the hearing that the person was convicted and the sentence he was issued; and he sends it to the division. The division then goes out and collects that person's license. In those cases where you have that suspension, it would allow the judge to physically take the license. Ms. Kradolfer further explained suspension is for 90 days to a year. Senator Daniels asked what you do when the person doesn't have his driver's license with him. Senator Brown asked how you got your license back. Ms. Kradolfer replied the judge would send it in with the report of the conviction. Senator Mazurek explained when the suspension time is up, they mail it back to

him. In the meantime, he may apply for a probationary license. Senator Blaylock asked if a truck driver could immediately ask the judge or the department for a probationary license because he needs it. Ms. Kradolfer stated it will depend on the category he falls into. In some instances, the district court can make a decision, In others, it is discretionary with the division. In that instance, they are notified what procedure they can go through to apply for this. Senator Mazurek stated if you don't take the breath test, the patrolman can pull your license for 90 days. Ms. Kradolfer explained they give you 72 hours to get home. Senator Mazurek pointed out Representative Gould's bill would allow you to make application to the court that they need that license to make a living. He further explained a first offense suspension meant your license was suspended for six months. With a revocation, your license would be revoked for one to three years. The motion carried unanimously.

ACTION ON HB 600: Senator Towe moved HB 600 be amended as follows:

1. Page 3, line 4.
Following: "or"
Insert: "a similar statute in"

2. Page 4, line 22.
Following: "or"
Insert: "a similar statute in"

Senator Mazurek stated this applies to primarily Montana citizens who are traveling out of state. They post and forfeit the bond because they want to continue on their way. Maybe that is appropriate, but that is the bill. The motion carried unanimously. Senator Daniels asked if the rules of evidence were now so relaxed that you don't have a problem with identification of persons. He asked what evidence you can use now. Ms. Kradolfer replied she was not sure. Senator Pinsoneault asked if maybe under the compact, the rules of evidence are affected so that a prior conviction can be considered simply on its face. Ms. Kradolfer replied the compact requires a certified copy. Senator Daniels responded that doesn't mean anything. Ms. Kradolfer said sometimes someone says it wasn't he, but most of the time they don't. There are several cases where the court says if something is presented as evidence, the person has the right to rebut it or it is considered valid. Senator Towe asked who had the burden of proof of proving the other conviction. If you bring in a certified copy from another state, have you satisfied the burden of proof? Ms. Kradolfer responded you have presented prima facie evidence to the court. Senator Crippen asked what was done with convictions in the state of Montana. Ms. Kradolfer stated she hasn't seen it come up in misdemeanor cases, but generally it would be admissible as public record. Senator Towe stated he would like someone to address the

question about the individual who is in another state and it is inconvenient for him to stay for trial and posts bond instead. Ms. Kradolfer replied you won't be arrested for DUI unless there were probable cause. Senator Towe moved HB 600 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senator Daniels voting in opposition.

There being no further business to come before the committee, the meeting was adjourned at 11:25 a.m.

Committee Chairman

STANDING COMMITTEE REPORT

March 6 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 600

third reading copy (blue color)

(Senator Mazurek)

INCLUDE OUT-OF-STATE CONVICTIONS FOR DUI & BROADEN CHARGING ON DUI

Respectfully report as follows: That HOUSE BILL No. 600

be amended as follows:

1. Page 3, line 4.
Following: "or"
Insert: "a similar statute in"

2. Page 4, line 22.
Following: "or"
Insert: "a similar statute in"

AND AS AMENDED

BE CONCURRED IN

~~XXXXX~~

~~XXXXXXXXX~~

Senator Joe Mazurek Chairman.